

In the Matter of Arbitration Between the	:	Grievance No. : 34-21-130405-0014-01-09
	:	
OHIO CIVIL SERVICE EMPLOYEES	:	
ASSOCIATION, AFSCME, LOCAL 11,	:	
AFL-CIO,	:	Grievant: Renee D. Roberson
Union	:	
	:	
and the	:	
	:	Date of Hearing: January 27, 2014
STATE OF OHIO, BUREAU OF	:	
WORKERS' COMPENSATION,	:	
	:	
Employer	:	Howard D. Silver, Esquire
	:	Arbitrator

DECISION AND AWARD OF THE ARBITRATOR

APPEARANCES

For: Ohio Civil Service Employees Association, AFSCME, Local 11,
AFL-CIO, Union

Jennie Lewis
Staff Representative
OCSEA, AFSCME, Local 11, AFL-CIO
390 Worthington Road
Westerville, Ohio 43082

For: State of Ohio, Bureau of Workers' Compensation, Employer

Bradley A. Nielsen
Labor Relations Officer 3
Ohio Bureau of Workers' Compensation
The William Green Building
30 West Spring Street
Columbus, Ohio 43215

PROCEDURAL BACKGROUND

This matter came on for an arbitration hearing on January 27, 2014 at 9:00 a.m. in training room one of the William Green Building at 30 West Spring Street, Columbus, Ohio 43215. At the hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. The hearing concluded at 10:45 a.m. on January 27, 2014 and the evidentiary record was closed at that time.

Post-hearing briefs from both parties were received by the arbitrator by February 10, 2014 and exchanged between the parties.

This matter proceeds under Article 25 of the parties' collective bargaining agreement, an Agreement in effect from March 1, 2012 through February 28, 2015.

The parties have stipulated that the grievance is properly before the arbitrator and no procedural objections have been raised by either party.

ISSUE

The parties agreed to a joint issue statement that reads as follows:

Did the Ohio Bureau of Workers' Compensation violate Article 17 of the OCSEA collective bargaining agreement in its selection process for a vacant Business Process Analyst 1 position and by not selecting the Grievant for the position?

If so, what shall the remedy be?

JOINT DOCUMENTS

The parties stipulated to the authenticity and admissibility of Joint Exhibits comprised of the contract between the State of Ohio and OCSEA, AFSCME, Local 11; the grievance trail; the posting for the Business Process Analyst 1 position; the applications for the posted position from Carol Wilson and Renee Roberson; the interviews of Carol Wilson and Renee Roberson, with summaries; a NEOGOV (tracking) document regarding applicants for the posted position; academic transcripts for Ms. Wilson; and a Minimum Qualifications Conversion Table.

STIPULATED FACTS

The parties have stipulated to the following facts:

- Posting for Business Process Analyst 1 (BPA 1) position was posted on 2/04/13 and was ended on 2/19/13.
- The Employer determined the Grievant, Renee Roberson, and Carol Wilson were to move on to the interview phase of the selection process.
- The Employer selected Carol Wilson for the BPA 1 position.
- The selected candidate had the most seniority of the applicants considered.
- The Grievant filed a grievance on 04/05/13.
- The grievance is properly before the arbitrator.
- There are no procedural objections by either party.

STATEMENT OF THE CASE

The parties to this arbitration proceeding, the Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO, hereinafter the Union, and the State of Ohio, Bureau of

Workers' Compensation, hereinafter the Employer, are parties to a collective bargaining agreement in effect from March 1, 2012 through February 28, 2015. Within the parties' collective bargaining agreement is Article 25, the parties' contractual grievance procedure. Article 25, section 25.01(A) defines "grievance" as any difference, complaint, or dispute between the Employer and the Union or any employee regarding the application, meaning, or interpretation of the parties' Agreement.

The parties' collective bargaining agreement also contains Article 17, Promotions, Transfers, Demotions, and Relocations. Within Article 17, section 17.04, Applications, the following language is found: "...Applicants must specify on the application how they possess the minimum qualifications for the position..."

Article 17, section 17.05, Selection, provides that for a position in a classification assigned pay range 28 or higher, the job is to be awarded to an eligible bargaining unit employee on the basis of qualifications, experience, education, and active disciplinary record. Article 17, section 17.05 provides that the discipline to be considered under this section shall not include oral or written reprimands. Article 17, section 17.05 provides that when these factors are substantially equal, State seniority shall be the determining factor.

On February 4, 2013, the Employer posted a vacancy in a Business Process Analyst 1 position. The posted position was in a classification assigned pay range 33; was a full-time, permanent, bargaining unit position; was a classified position; and was located in the Bureau's Division of Information Technology, Business Service Analytics – Project Management. The time period expressed in the posting for submitting a bid on the posted position was from February 4, 2013 through 11:59 p.m. on February 19, 2013.

The Business Process Analyst 1 posting on February 4, 2013 included the following language:

*****INTERNAL - ONLY VACANCY POSTING*****

This is a bargaining unit position and is being posted in accordance with the OCSEA union contract. Only applications from BWC employees are being accepted.

Potential applicants lacking or not clearly documenting their qualifications within The Supplemental Questions will be eliminated from consideration. A resume may NOT be used in place of concise and thorough responses to Supplemental Questions...

The February 4, 2013 posting provided under **Minimum Qualifications:**

Education AND Experience:

Core undergraduate program in Computer Science, Information Systems or Business Administration or equivalent work experience

AND

Minimum 3 years combined relevant technical and business work experience as specified by the agency position description and vacancy/job posting.

Between February 4, 2013 and February 19, 2013, bids were received by the Employer from seven BWC applicants who were determined to meet the minimum qualifications for the posted position. Among these seven internal applicants were the grievant, Ms. Roberson, and Ms. Wilson (now Baker). The names of the internal applicants meeting the minimum qualifications and their applications were forwarded to the hiring manager in the Bureau's Division of Information Technology and interviews of the applicants were scheduled and conducted.

Following the interviews and an assessment of the applicants, the Employer selected Ms. Wilson for the posted position. Ms. Wilson was found to be the best qualified and the most experienced applicant. Ms. Wilson was also the applicant with the most State seniority.

On April 5, 2013, the Union filed a written grievance form with the Employer on behalf of Ms. Roberson, charging a violation of Article 17 of the parties' collective bargaining agreement. The grievance form alleged that: "On April 2, 2013 the grievant received notification that she was not selected for the BPA 1 position (PCN 20066996). This was in violation of Article 17[.]"

The written grievance form filed with the Employer on April 5, 2013 was submitted at step three of the parties' grievance procedure and was denied by the Employer on May 31, 2013. The Employer's step three response was appealed by the Union on June 4, 2013. On this appeal the grievance was described as: "Grievant was not selected for BPA1 position." Also appearing on the Union's June 4, 2013 notice of appeal is the following: "Person who got BPA1 position does not meet minimum qualifications." The Union's appeal was denied by the Employer.

On June 12, 2013, the Union moved the grievance to arbitration pursuant to Article 25, section 25.02 of the parties' collective bargaining agreement.

SUMMARY OF TESTIMONY

Stacie Hart

Stacie Hart began working as a Personnel Officer at the Ohio Department of Job and Family Services in 1998 and continued working in that capacity until February 14, 2000 when she transferred to the Ohio Bureau of Workers' Compensation to perform similar duties. Ms. Hart continues to work at the Ohio Bureau of Workers' Compensation carrying out BWC

personnel policies and implementing procedures agreed in the parties' collective bargaining agreement. During the course of Ms. Hart's duties over the years Ms. Hart has screened thousands of applications.

Ms. Hart explained that within the Bureau of Workers' Compensation a screening process occurs among applicants to exclude from consideration those applicants who do not meet the minimum qualifications of the position sought.

Ms. Hart referred to page six of the application from Ms. Wilson for the Business Process Analyst 1 position, a page titled Job Specific Supplemental Questions. Page six of the application presents eleven numbered questions, including question five that reads: **"Please select the response which best describes your education level in Computer Science, Information Systems, or Business Administration."** The answer provided by Ms. Wilson reads: "Some coursework, but have not completed the undergraduate core."

Question six on page six of Ms. Wilson's application reads: **"Please select the response which best describes your work experience in computer science/information systems."** Ms. Wilson answered: "2 years or more."

Question seven on Ms. Wilson's application, as noted by Ms. Hart, reads as follows: **"Please select the response which best describes your combined relevant technical and business work experience as specified by the knowledge and proficiencies in the systems, tools, and business activities as listed on this job posting. You will have the opportunity to expound on your response and address the specifics of your pertinent experience below."** Ms. Wilson responded to this question by answering: "Some, but less than three years."

Ms. Hart testified that Ms. Wilson had been mistaken in her response to question seven by answering, wrongly, that Ms. Wilson had less than three years of the relevant technical and

business work experience specified. Ms. Hart testified that from the rest of Ms. Wilson's application it was obvious that Ms. Wilson met the minimum qualifications for the Business Process Analyst 1 position. Ms. Hart noted that because Ms. Wilson was an internal applicant, as opposed to an external applicant, Ms. Wilson was not disqualified in her bid upon the Business Process Analyst 1 position based on the mistaken response to supplemental question seven. The Employer looked at all of the information provided about Ms. Wilson and Ms. Wilson was given the benefit of the doubt. Ms. Hart noted that at page four of Ms. Wilson's application, four years of pertinent experience is reported as having occurred between November, 2007 and November, 2011.

Ms. Hart explained that the minimum qualifications to fill the Business Process Analyst 1 position require a core undergraduate program in computer science, information systems, or business administration, or equivalent work experience, and requires a minimum of three years of combined relevant technical and business work experience as specified by the agency's position description and the position's posting. Ms. Hart noted that without an undergraduate degree, two years of work experience are required to show equivalency as confirmed by the Minimum Qualification Conversion Table. Ms. Hart noted that Ms. Wilson does not possess an undergraduate core degree in computer science, information systems, or business administration but does have over twenty years' experience in carrying out administrative functions within an Information Technology Department, when two years of relevant work experience are needed to show equivalency.

Ms. Hart testified that Ms. Wilson reported on her application that she had four years of combined relevant technical and business work experience when three years of this work experience are required to meet the minimum qualifications for the posted position. In this regard

Ms. Hart referred to questions eight, nine, and ten on page six of Ms. Wilson's application wherein Ms. Wilson described her experience with Project management software, described her experience with Collaboration software, and described her experience in Project time and effort estimation.

Ms. Hart testified that all applications for the Business Process Analyst 1 position were filled out on-line, using on-screen drop-down boxes to indicate responses to supplemental questions in the application. Ms. Hart testified that Ms. Wilson had obviously made a mistake in registering her response in the drop-down box for supplemental question seven, reporting that she had less than three years of the work experience described in supplemental question seven. Ms. Hart testified, however, that the rest of the application provided by Ms. Wilson had been accurate and complete.

Ms. Hart identified a NEOGOV screening summary as a tracking record among all of the applicants for the Business Process Analyst 1 position posted on February 4, 2013, including applicants Renee Roberson and Carol Wilson. At page three of this tracking document the following appears under Renee D. Roberson:

Transcripts on file/verified; BS in Mgmt; Associate's in IT; other courses at another college w/no major. no degree. Employee states she has 5 yrs overall relevant exp. Regarding project Mgmt software, applicant cites 5-7 yrs exp using Clarity. Regarding Collaboration software she cites 5+ yrs using SharePoint. Regarding Project time/effort estimation (sic) exp, applicant lists 8 different projects. Based on documented educational achievements, as well as this posting being for a Development level classification and based on information provided, this applicant should be included in interview pool.

At page three of the NEOGOV tracking document the following appears under Carol Y. Wilson:

Transcripts on file/verified: some coursework w/no major. no degree. Copious documentation on file from lengthy discussions about this applicant's suitability to serve in a TWL over this very position, which she has been doing since 7/16/2012.

Ms. Hart testified that the copious documentation referred to above was submitted to the Employer after the application from Ms. Wilson had been submitted.

Ms. Hart identified Union Exhibit 1 as a summary that was used to consider Ms. Wilson's suitability for a temporary work level assignment as a Business Process Analyst 1. Ms. Hart stated that this document was not used in considering Ms. Wilson's bid for a permanent assignment to the position of Business Process Analyst 1.

Ms. Hart identified Union Exhibit 2 as a summary of the interviews of applicants for the Business Process Analyst 1 position prepared by BWC IT hiring manager Larry King for BWC's IT Department. Page three of this summary reads as follows:

We are recommending Carol Wilson-Baker for the position of Business Process Analyst 1 (PN20066996). Carol has the most experience in Project Management at the BWC in the use of Clarity than the other applicants. Carol is the most senior union member of the applicants. Carol scored the highest on the interviews and was able to relate her work experiences to the job requirements in the interview. She demonstrated knowledge of the operations of the PMO and Clarity above and beyond the other candidates. While many of the other candidates were excellent applicants Carol demonstrated more experience and knowledge than the other candidates and is our recommendation for selection for the position.

Under questioning by the representative of the Employer, Ms. Hart confirmed that Ms. Wilson had shown that she possessed the minimum qualifications for a July, 2012 temporary work level assignment as a Business Process Analyst 1.

Renee D. Roberson

Renee D. Roberson, the grievant in this proceeding, testified that she completed an application for the Business Process Analyst 1 position that had been posted on February 4, 2013. While filling out the application Ms. Roberson had had discussions with Ms. Hart and others in the Department of Human Resources in the Ohio Bureau of Workers' Compensation during which Ms. Roberson had been told that minimum qualifications must be detailed in the application. Ms. Roberson was informed that a resume would not be considered. Ms. Roberson was told that only that which had been presented in the application, responses to supplemental questions in the application, and academic transcripts would be considered in making a selection among the applicants for the posted position.

Carol Wilson (now Baker)

Carol Baker (formerly Wilson) has been serving as a Business Process Analyst 1 in the program management office of the Bureau of Workers' Compensation for the past nine months as a permanent, full-time, classified employee. Ms. Wilson testified that she had applied for this position when it was posted in February, 2013 and had indicated on her application that she met the minimum qualifications for the posted position.

Ms. Baker testified that when she filled out her application she made a mistake in a drop-down box for a response to supplemental question seven on page six of Ms. Wilson's application. Ms. Wilson's response reported less than three years of experience; Ms. Wilson had more than three years of experience.

Ms. Baker testified that she had formerly served under a temporary work level assignment that required her to meet the minimum qualifications for Business Process Analyst 1 and Ms. Baker had met those minimum qualifications. Ms. Baker testified that at the time she

applied for the permanent assignment to the Business Process Analyst 1 position she had been working as a Business Process Analyst 1 under a temporary work level assignment.

Under questioning by the representative of the Union, Ms. Baker explained that she had clicked on the wrong response to supplemental question seven on page six of her application, reporting that she had less than three years of experience. Ms. Baker described this as an honest mistake. Ms. Baker testified that the mistake was noticed by the Employer and corrected.

Ms. Baker identified Union Exhibit 3 as projects worked on by Ms. Wilson using Clarity software and spreadsheets. Ms. Baker testified that this document presents the projects she worked on and the time devoted to those projects from 2007 through 2011.

POSITIONS OF THE PARTIES

Position of the Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO

It is the position of the Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO, the Union, that during the selection process for the posted Business Process Analyst 1 position "...the Employer determined that the Grievant did not qualify for the position as much as the selected candidate." As stated by the Union in its post-hearing brief at page one: "The Grievant filed a grievance arguing that she was more qualified."

The Union contends that the documents associated with the selection process for the Business Process Analyst 1 position reflect discrepancies. The Union points out that the candidate selected did not answer the supplemental questions in a manner that demonstrated the candidate met the minimum qualifications for the posted position. The Union notes that the selected candidate reported in her application that she did not possess the required experience to qualify for the posted position because, as reported by the applicant in her application, she

possessed less than three years of experience in the work described in supplemental question seven. The Union points out that the application submitted by the selected candidate reported that the applicant did not possess the minimum qualifications for the position sought.

The Union argues that the evidence indicates Ms. Wilson reported working in a temporary work level assignment seven months prior to the date upon which this temporary work level assignment actually began. While the Employer argues that the difference between December, 2011 as reported by Ms. Wilson, and July, 2012, the actual month during which Ms. Wilson began serving under the temporary work level assignment, is not material to a determination of the best qualified candidate, the Union disagrees. The Union argues that the mistaken date gives the appearance of greater experience than actually possessed. The Union also argues: "Using information regarding the temporary work level to qualify Ms. Wilson for the next phase of the selection process is, at a minimum, tantamount to pre-positioning." See the Union's post-hearing brief, page two.

The Union argues that the duties described by Ms. Wilson as having been assigned to her are clerical in nature. The Union claims that Ms. Wilson failed to describe duties that indicate Ms. Wilson had the "...ability to: define problems, collect data, establish facts and draw valid conclusions, prepare meaningful, accurate and concise reports, stay abreast of current technologies in area of IT assigned." As noted by the Union, these characteristics are listed in the Major Worker Characteristics section of the classification specification for Business Process Analyst 1 and are reflected in the posting for the Business Process Analyst 1 position on February 4, 2013.

The Union notes that Ms. Wilson does not possess a core undergraduate program degree in Computer Science, Information Systems, or Business Administration and because the duties

actually assigned to Ms. Wilson were clerical in nature and not the work described in the Major Worker Characteristics section of the specification for Business Process Analyst 1, the Union argues that Ms. Wilson has failed to demonstrate that she met the “equivalent work experience” requirement listed in the posting.

The Union points out that the posting of the position at issue included the following language: “Potential applicants lacking or not clearly documenting their qualifications within The Supplemental Questions will be eliminated from consideration.” The Union notes that it has been the position of the Employer that only the information contained in the application and in response to supplemental questions are considered in making a selection among candidates for the posted position.

The Union points out that the Employer, in express language in the posting of the position at issue, limited the scope of documents to be considered. The Employer then exceeded that limitation by considering additional documents outside the parameters set by the Employer with this done to justify the Employer’s selection. The Union contends that although the Employer established express criteria intended to screen out applicants who reported that they did not meet minimum qualifications for the posted position, Ms. Wilson’s application was nonetheless considered, with copious documentation submitted after Ms. Wilson’s application had been submitted to the Employer.

The Union points out that the limitation on the documents to be considered for the posted position were communicated to the grievant who had been told that only the information in the application, transcripts, and responses to supplemental questions would be considered in the selection process. The grievant was told that only the application, responses to supplemental

questions, and any other documents admitted with the application would be considered during the screening phase.

The Union argues that the Employer should be required to treat all applicants in a fair and uniform manner. Candidates who do not demonstrate that they meet the minimum qualifications through their applications and through their responses to supplemental questions are not to be forwarded for interviews and are not to be considered for selection. The Union notes that in this case Ms. Wilson reported that she did not possess the minimum qualifications for the posted position and therefore, argues the Union, Ms. Wilson should have been excluded from the pool of candidates from which the selection was made. The fact that Ms. Wilson was treated differently by the Employer, argues the Union, shows a preference that has no place in the selection process.

The Union points out that Ms. Wilson had had an opportunity to review and correct information on her application but had not. Based on the responses given by Ms. Wilson in her application there was every reason to conclude that Ms. Wilson did not meet the minimum qualifications for the position at issue. Pointing to the decision of Arbitrator Robert Stein in an arbitration proceeding between these parties in the case of grievant Jeremiah Morgan, issued May 17, 2004, grievance number 34-34-020211-0014-01-09, the Union refers to the following language in that decision:

Management has considerable latitude to manage its workforce and to select employees for promotion, even after consideration of its obligations under Article 17.05. However, in the exercise of its management rights, the Employer is governed by the rule of reasonableness, and the exercise of its management rights must be done in the absence of arbitrary, capricious, or unreasonable discretion. (citations omitted) In matters brought to arbitration, an arbitrator has an obligation to make sure the decisions of the Employer are fair and are not arbitrary. (citations omitted)

It is the position of the Union that the Employer's decision to select Ms. Wilson for the position was arbitrary and capricious. The Union contends that Ms. Wilson should have been excluded from consideration for the posted position upon a review of the responses to the supplemental questions in Ms. Wilson's application. As argued by the Union, the Employer cannot have it both ways. The Employer cannot use the supplemental questions to screen out an applicant from one position and then ignore the supplemental questions and the Employer's own process by looking outside the scope of documents to be considered for the purpose of retaining an otherwise ineligible applicant in the candidate pool. The Union argues that the Employer is unable to say that the selected applicant demonstrated the necessary experience in her application to meet the minimum qualifications for the posted position because the evidence shows the selected applicant's duties were mostly clerical and not in line with the Major Worker Characteristics listed in the posting.

The Union urges the arbitrator to sustain the grievance, award the position in question to the grievant, award all back pay to the grievant she would have received had the grievant been selected for the posted position, and award any other remedy deemed appropriate.

Position of the State of Ohio, Bureau of Workers' Compensation

It is the position of the State of Ohio, Bureau of Workers' Compensation, the Employer, that the Union has failed to produce any evidence to support the Union's contention that the candidate selected for the posted Business Process Analyst 1 position did not meet the minimum qualifications for that position. The Employer notes that the Union does not argue that Ms. Wilson was less qualified than Ms. Roberson or that Ms. Roberson was somehow entitled to the position at issue based upon the provisions of Article 17. The Employer points out that the Union's sole argument in this case is that the candidate selected, Ms. Wilson (now Baker) who

possessed the most State seniority, failed to meet the minimum qualifications for the Business Process Analyst 1 position.

The Employer points to the testimony of Stacie Hart who testified that there were two components in meeting the minimum qualifications of the Business Process Analyst 1 position. One component was education and the other component was experience. The education component may be met through either the completion of a core undergraduate program in Computer Science, Information Systems, or Business Administration or a candidate may show equivalent work experience, in this case two years relevant work experience.

The other component in meeting the minimum qualifications for the Business Process Analyst 1 position is experience and this component requires a minimum of three years of combined relevant technical and business work experience as specified in the position's posting and the agency's position description.

Ms. Hart testified at the arbitration hearing that Ms. Wilson met the education component for the minimum qualifications for the posted position through an equivalent work experience that included twenty-one years of experience in the BWC IT Department. Ms. Hart testified that with over twenty years of relevant experience, it was determined by the Employer that Ms. Wilson met the education component of the minimum qualifications for the Business Process Analyst 1 position.

The Employer points to the testimony of Ms. Hart wherein she said that Ms. Baker met the experience component for the minimum qualifications for the Business Process Analyst 1 position having accumulated four years of relevant technical and business experience described in the position's posting while working in a Secretary position reporting to the IT Director from 2007 through 2011. Ms. Hart described a number of duties during this period that in Ms. Hart's

opinion qualified as relevant experience under the position's posting and classification specification for Business Process Analyst 1.

The Employer notes that in 2012 Ms. Wilson had been assigned to a temporary work level assignment to serve as Business Process Analyst 1 and at that time had been determined to meet the minimum qualifications for Business Process Analyst 1. The Employer notes that Ms. Wilson had been determined to meet the minimum qualifications for the Business Process Analyst 1 position a year before the February, 2013 posting of the Business Process Analyst 1, and the Employer claims that Ms. Wilson met the minimum qualifications then and met the minimum qualifications when she submitted a bid on the posted permanent position in February, 2013.

The Employer notes that Ms. Wilson selected a wrong response when answering supplemental question seven in her application. The Employer points out that selecting an incorrect response to one supplemental question does not cause an internal candidate to be excluded from further consideration. The Employer notes that Ms. Wilson testified that she made a mistake in selecting the wrong response to supplemental question seven and testified that she meant to select the response: "three years or more," not the response that was selected: "some, but less than three years."

The review of Ms. Wilson's application by Ms. Hart allowed Ms. Hart to know immediately that an incorrect response to supplemental question seven had been made. The rest of the application from Ms. Wilson was clearly at variance with the mistaken response to supplemental question seven. Ms. Hart in her testimony at the hearing stated that the Ohio Bureau of Workers' Compensation had never screened out an internal BWC applicant for making a mistake by selecting an incorrect response to a supplemental question in the application

when the remainder of the application showed the applicant met the minimum qualifications for the position sought. The Employer notes that Ms. Hart found that the entirety of the application from Ms. Wilson demonstrated that Ms. Wilson met the minimum qualifications for the Business Process Analyst 1 position. The Employer states at page five of its post-hearing brief: “...One incorrect response to a supplemental question does not negate the remainder of the application that clearly demonstrated Ms. Wilson-Baker met the MQ’s for the BPA1 position.”

The Employer argues that Ms. Hart clearly found that Ms. Wilson met the minimum qualifications for the posted position and the hiring managers in IT determined Ms. Wilson to be the best qualified candidate for the posted position. Ms. Wilson was also the applicant with the most State seniority and, according to the Employer, clearly demonstrated that she met the minimum qualifications for the Business Process Analyst 1 through her responses to supplemental questions in the application. These qualifications, argues the Employer, have not been rebutted by the Union.

The Employer contends that it did not violate Article 17 of the parties’ collective bargaining agreement when it appointed an applicant who met the minimum qualifications for the posted position, an applicant who was determined to be the most qualified applicant for the position and was the applicant with the most State seniority.

As to Union Exhibit 3, a Clarity software spreadsheet, containing forty-nine projects worked on by Ms. Wilson from June, 2007 through 2011, the Employer contends that this spreadsheet supports the information contained in Ms. Wilson’s application, supporting the establishment of Ms. Wilson’s satisfaction of the minimum qualifications for the Business Process Analyst 1 position.

It is the position of the Employer that the Union has not identified that part of the parties' collective bargaining agreement that has purportedly been violated by the selection of Ms. Wilson. The Employer claims that the Union has failed to provide any evidence to indicate that Ms. Wilson failed to meet the minimum qualifications of the posted position, and there is not a preponderance of evidence in the hearing record establishing that Ms. Wilson did not possess the minimum qualifications for the Business Process Analyst 1 position in February, 2013.

The Employer claims that Ms. Wilson met the minimum qualifications for the posted position, was the best qualified candidate for the posted position, possessed the most State seniority among the bargaining unit members who applied for the posted position, and the procedures carried out by the Employer in making a selection for the posted position did not violate Article 17 of the parties' collective bargaining agreement. The Employer urges the arbitrator to deny the grievance in its entirety.

DISCUSSION

Article 25, section 25.01(A) defines "grievance" as meaning "...any difference, complaint, or dispute between the Employer and the Union or any employee regarding the application, meaning, or interpretation of the parties' Agreement." In this case the grievance identifies Article 17 as that part of the parties' collective bargaining agreement that had been violated in application, meaning, or interpretation.

Article 17, section 17.04 provides that: "...Applicants must specify on the application how they possessed the minimum qualifications for the position..." The Union's arguments in support of the grievance focus on this language in two ways.

First, the Union contends that the candidate selected, Ms. Wilson (now Baker), did not possess the three years of relevant combined technical and business work experience specified in the agency position description and job posting for Business Process Analyst 1. The Union argues that the duties described by Ms. Wilson in her application for the posted Business Process Analyst 1 position are clerical in nature and do not rise to the level of the technical and business work experience required by supplemental question seven in Ms. Wilson's application.

The evidence in the hearing record shows that eight months prior to posting the vacant Business Process Analyst 1 position in February, 2013, Ms. Wilson had been selected for a temporary work level assignment in the position of Business Process Analyst 1 that began in July, 2012. At the time Ms. Wilson was considered and selected for the temporary work level assignment a determination had been made by the Employer that Ms. Wilson at that time met the minimum qualifications for the Business Process Analyst 1 position.

When Ms. Wilson filed her application for the posted Business Process Analyst 1 position she included within her application at page four under question 2, Summary of Qualifications, a number of duties that include the following:

Manage non-strategic projects, work directly with customers to manage and maintain projects through complete project lifecycle, follow systematic project management process to insure that high quality costs and schedule estimates are always available for customers and division management, obtain updated cost estimates and enter appropriately in Clarity and adjust project costs and schedule estimates; determine and report through approval/denial; add approved project schedules; maintain documentation to support all changes to Clarity to all project statuses.

There are a great number of other duties presented in Ms. Wilson's application but it is clear from the evidence presented that neither in the temporary work level assignment in July,

2012 nor in considering the bid upon the Business Process Analyst 1 position posted on February 4, 2013 did the Employer find that Ms. Wilson failed to meet the minimum qualifications for Business Process Analyst 1. The duties presented in the application from Ms. Wilson for the three years required by supplemental question seven do not appear to the arbitrator to be limited to clerical tasks.

The Union claims that Ms. Wilson has failed to describe the duties that reflect the level of responsibility necessary to show a satisfaction of the minimum qualifications for the Business Process Analyst 1 position. The arbitrator does not find this claim to have been substantiated by a preponderance of evidence in the hearing record. The burden of persuasion in this case is not upon Ms. Wilson to defend her experience but upon the Union to show that the applicant selected did not meet the minimum qualifications for the position at issue. The arbitrator finds a preponderance of evidence in the hearing record reflecting that the candidate selected for the posted position did meet the minimum qualifications for the position Business Process Analyst 1 at the time this candidate filed her bid for this position in early February, 2013.

The other component of the Union's argument is that the candidate selected for the posted position, Ms. Wilson (now Baker), reported on her application through a response to supplemental question seven that she did not possess the work experience required for the Business Process Analyst 1 position. The Union points out that under a procedure set by the Employer, announced in the position's posting, and required by express language within Article 17, section 17.04 of the parties' Agreement, the applicant selected failed to specify on her application how she possessed the minimum qualifications for the position. This candidate, therefore, argues the Union, should have been barred from further consideration.

The hearing record contains the testimony of Ms. Hart who explained that external candidates for a BWC position and internal candidates for a BWC position are treated differently. A mistake on an application from an applicant external to BWC ends the inquiry as it excludes that applicant from further consideration.

A BWC employee, however, who files a bid on a posted position is not excluded from consideration on the basis of a mistaken response. In this regard bargaining unit members enjoy a preference for a posted position over applicants who are not employed by BWC.

The Union argues that everyone should have been treated the same, including external and internal bidders. The Union argues that the screening process cannot be used differently among different applicants.

A preponderance of the evidence in the hearing record indicates that Ms. Wilson's application contained a single error, a mistaken response to supplemental question seven. Ms. Hart testified at the hearing that the remainder of Ms. Wilson's application appeared to be accurate and complete.

The arbitrator finds nothing within the parties' collective bargaining agreement that would require external and internal candidates for a BWC position to be treated uniformly. A fundamental aspect of being a member of a bargaining unit is that terms and conditions of employment agreed on behalf of the bargaining unit apply to members of the bargaining unit. There is nothing that demands that the terms and conditions of employment applicable to a bargaining unit must mirror the terms and conditions of employment of others outside the bargaining unit. A mistake on an application has not disqualified bargaining unit members who have bid on a position and the fact that external candidates are excluded under such a

circumstance does not impinge or limit the preference extended to bargaining unit members in this regard.

The mistake on Ms. Wilson's application was singular and stood out in bold contrast to other information provided in the application and in responses to other supplemental questions. To an administrator who was aware that Ms. Wilson had served within a temporary work level assignment for the very classification being considered under the February 4, 2013 posting, a response from the applicant to the effect that she did not meet the minimum qualifications to serve in this classification gives rise to a logical contradiction as such satisfaction of the minimum qualifications would have been required to serve in the temporary work level assignment.

The application from Ms. Wilson provided the information that contradicted the mistaken response to supplemental question seven. In sum, the Employer had every reason to know that the response to supplemental question seven by Ms. Wilson in her application was mistaken and had sufficient information available from the remainder of Ms. Wilson's application to determine that minimum qualifications had been met.

If it is presumed that the candidate selected does meet the minimum qualifications for the position at issue and that the mistaken response to supplemental question seven does not exclude the candidate from the selection process, and if it is presumed that both the grievant, Ms. Robeson, and Ms. Wilson meet the minimum qualifications for the posted position, and if it were to be presumed that Ms. Roberson and Ms. Wilson were comparably qualified for the position, Ms. Wilson would still be the selected candidate on the basis of greater State seniority. In this case the hiring manager for BWC IT found Ms. Wilson to be the most qualified candidate among the

applicants who met the minimum qualifications for the position at issue and recommended her selection.

The arbitrator does not find the selection of Ms. Wilson (now Baker) for the position at issue to have been a decision by the Employer that was arbitrary, capricious, or an abuse of discretion. For the Union to prevail on this grievance, therefore, a preponderance of evidence must be presented proving that the Employer violated the application, meaning, or interpretation of the parties' collective bargaining agreement. The arbitrator finds no such violation on the facts of this case. Accordingly, the arbitrator denies the grievance.

AWARD

1. The grievance giving rise to this proceeding is found arbitrable and properly before the arbitrator for review and resolution.
2. The Ohio Bureau of Workers' Compensation did not violate Article 17 of the OCSEA collective bargaining agreement in its selection process for a vacant Business Process Analyst 1 position and by not selecting the Grievant for the position.
3. The grievance is denied.

Howard D. Silver

Howard D. Silver, Esquire
Arbitrator
500 City Park Avenue
Columbus, Ohio 43215

Columbus, Ohio
February 28, 2014

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Decision and Award of the Arbitrator in the Matter of Arbitration Between OCSEA, AFSCME, Local 11, AFL-CIO and the State of Ohio, Bureau of Workers' Compensation, grievance number 34-21-130405-0014-01-09, was served electronically upon the following this 28th day of February, 2014:

Jennie Lewis
Staff Representative
OCSEA, AFSCME, Local 11, AFL-CIO
390 Worthington Road
Westerville, Ohio 43082
jlewis@ocsea.org

and

Bradley A. Nielsen
Labor Relations Officer 3
Ohio Bureau of Workers' Compensation
The William Green Building
30 West Spring Street
Columbus, Ohio 43215
Bradley.N1@bwc.state.oh.us

Howard D. Silver

Howard D. Silver, Esquire
Arbitrator

Columbus, Ohio
February 28, 2014